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Via Hand Delivery

June 27, 1995

Wayne Watts
Vice President
General Attorney & Secretary

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RE: CC Docket No. RM-8643, Petition for Rulemaking
of Pacific Bell Mobile Services Regarding a Plan
for Sharing the Costs of Microwave Relocation

Dear Mr. Caton:

Enclosed for filing in the above-referenced proceeding
are the original and ten copies of the Informal
Supplemental Comments of Southwestern Bell Mobile Systems,
Inc. Please file these Comments among the papers in this
proceeding.

Please return a file-marked copy of the Comments to
our courier.

Thank you for your assistance.

Very truly yours,

A handwritten signature in cursive script that reads "Wayne Watts".

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Petition for Rulemaking)
of Pacific Bell Mobile Services) Docket No. RM-8643
Regarding a Plan for Sharing)
the Costs of Microwave Relocation)

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INFORMAL SUPPLEMENTAL COMMENTS OF
SOUTHWESTERN BELL MOBILE SYSTEMS, INC.
IN SUPPORT OF THE PETITION FOR RULEMAKING
OF PACIFIC BELL MOBILE SERVICES

Pursuant to Section 1.41 of the Commission's Rules, Southwestern Bell Mobile Systems, Inc. ("SBMS") files these Informal Comments to supplement the record in the above-referenced matter.¹ As SBMS noted in its Comments in this matter, the PBMS Petition raises a number of significant issues which should be addressed in a Notice of Proposed Rulemaking.

SBMS is the high bidder for the licenses to provide PCS services in the Tulsa, Oklahoma, Little Rock, Arkansas and Memphis, Tennessee MTAs. SBMS is in the process of identifying and relocating incumbent microwave licensees in these markets. As

¹ Pacific Bell Mobile Services filed its Petition for Rulemaking on May 5, 1995 (the "PBMS Petition"). The FCC established a comment cycle requiring initial Comments to be filed on June 15, 1995, with Reply Comments to be filed on June 30, 1995. SBMS filed Comments in this Rulemaking in a timely fashion (the "SBMS Comments"). SBMS requests that the Commission accept these informal comments in accordance with Section 1.41 of the Commission's Rules to facilitate the preparation of a complete Notice of Proposed Rulemaking in these important matters.

pointed out in the PBMS Petition and in SBMS' Comments, there are a number of issues which the Commission should address in a Notice of Proposed Rulemaking.²

I. The Commission Should Establish Parameters
For the Definition of "Comparable Facilities"

In the Commission's current Rules a PCS operator has an obligation to replace existing microwave facilities with a system that is "comparable" to the existing 2 GHz system.³ In addition to the requirement for a PCS operator to provide an incumbent licensee with this facility, the incumbent licensee has one year from their acceptance of these facilities to demonstrate the new facilities were, in fact, not comparable to the former facilities. At that point in time the PCS operator has an obligation to upgrade these facilities previously accepted as comparable or reinstate the incumbent licensee's equipment which was previously relocated.⁴

Unfortunately, there is no standard established in the Commission's Rules to define what a comparable facility might mean. This creates significant ambiguity for both the incumbent microwave licensee and places the PCS operator at a significant disadvantage attempting to negotiate the relocation of an incumbent licensee.⁵

² SBMS has suggested in its Comments a number of additional issues not raised in the PBMS filing which the Commission should address.

³ See proposed Commission Rule at 47 C.F.R., § 101.69.

⁴ See 101.69(e)(2). See attachment A.

⁵ This becomes particularly important in urban areas where the existence of one or two microwave paths which, if not relocated, may prevent the PCS operator from being able

The Commission should in this NPRM seek comments on an appropriate definition of comparability. This definition of comparability will be particularly important when the PCS provider and incumbent licensee are considering alternative media as a replacement for the incumbent licensee's microwave facilities.⁶

SBMS suggests that a minimum comparability standard be established for both microwave facilities and alternative media such as fiber. For a microwave facility to be comparable it should have:

1. The existing channel capacity of the relocated path;
2. The same reliability as the relocated path;
3. The new frequency should have the same growth potential in terms of the ability to expand the capacity of that path in the new spectrum (i.e., 6 GHz or 11 GHz, etc.); and
4. The availability for backup if, but only if, the existing facility already provides redundancy.

In a similar vein, to meet the comparability standard, the alternative media facility should have:

1. The existing channel capacity of the relocated path;
2. The same path reliability;

to turn on service. In light of the Commission's currently established two year voluntary negotiation period, followed by a one year mandatory negotiation period, this places incumbent licensees in the enviable position of being able to place a PCS operative's significant investment at risk.

⁶ See 47 C.F.R., § 101.69(c)(2).

3. The same growth potential; and
4. Diversity or alternative routing capabilities offered by the existing microwave path.

SBMS would urge the Commission to seek comments on these issues in any NPRM issued as a result of this docket.

II. The Commission Should Seek Comments on the
Viability of Narrowing the PCS Operator's Obligation to
Pay "All Relocation" Versus "Reasonable Relocation" Costs

In proposed Commission Rule Section 101.69 the PCS provider has an obligation to reimburse an incumbent licensee for ". . . payment of all (emphasis added) relocation costs, including all engineering, equipment, site and FCC fees, as well as any reasonable additional costs that the relocated fixed microwave licensee might incur as a result of operation in another fixed microwave band or migration to another medium;" ⁷ This rule creates an interesting dichotomy. In the first instance, the PCS provider is to reimburse the incumbent licensee for all engineering, equipment, site and FCC fees without any limitation that these fees or costs be incurred reasonably or be reasonable in amount. The same rule on the other hand limits additional costs to "reasonable additional costs" that the incumbent licensee might incur as a result of operation in another band.

The rules section by its own terms can be interpreted to place no limits and to require no efforts on the part of the incumbent licensee in incurring costs for relocated paths. SBMS would urge

⁷ See Commission Rule Section 101.69(c)(1).

the Commission to seek comments on the appropriateness of modifying proposed Section 101.69(c)(1) to limit the payment of relocation costs to costs that are reasonably incurred and/or costs that are reasonable in amount. This rule definition should be considered in addition to any maximum price cap as proposed in the PBMS Petition. Since a reasonableness standard may prevent the costs from reaching the cap. Without such a standard, the cap proposed by PBMS may become a de facto floor.⁸

III. The Commission Should Establish Specific
Rules for Dispute Resolution, Including Mandatory
Use of Alternative Dispute Resolution

As currently written, the Commission's rules do not establish a specific mechanism for, nor an obligation to participate in binding arbitration. The Commission should seek comments on and should establish rules requiring binding arbitration in the event that an incumbent licensee and a PCS operator cannot agree on either the comparability of facilities and/or reasonable costs incurred in any relocation. In addition, SBMS urges the Commission to utilize a model similar to the major league baseball model of requiring the arbitrator to choose between the parties' proposals. This model should force all parties to suggest a commercially reasonable price and terms and conditions during the course of the negotiations since the arbitrator would be limited to choosing between the two alternatives proffered by the parties.

⁸ See PBMS Petition at pages 7 through 10.

While SBMS does not wish to overburden the Commission resources, we would suggest that the Commission is the appropriate arbitrator of these disputes. At a bare minimum SBMS would suggest that the Commission seek comments on the identification of an appropriate arbitrator, as well as comments regarding appropriate arbitration rules.

IV. The Commission's Current Rules Do Not Contain
Sufficient Definition of the Status of Incumbent
Primary and Secondary Microwave Paths

Under the Commission's current rules, microwave paths operated by incumbent licensees are entitled to relocation benefits only if they are primary paths.⁹ This becomes particularly important because the term "secondary" is a term of art in the industry. A microwave path designated as secondary has certain obligations vis-a-vis a primary licensee in the same spectrum. These obligations include the modification of the system to eliminate any interference with the primary licensee in that spectrum, the obligation to turn off a path if it is interfering with a primary licensee, and to accept interference from the primary licensee.¹⁰

⁹ See proposed Commission Rule Section 101.69.

¹⁰ SBMS has in excess of 60 FCC cellular licenses, including A-Band licenses in the Chicago, Illinois, Washington, D.C., Baltimore, Maryland, Boston, Massachusetts and Buffalo, Rochester and Syracuse, New York MSAs. In addition, SBMS holds B-Band cellular licenses in markets such as Dallas and San Antonio, Texas, Oklahoma City, Oklahoma, Kansas City, Missouri and St. Louis, Missouri MSAs. SBMS makes extensive utilization of 2 GHz microwave paths in the operation of these cellular licenses. As such, SBMS finds itself as both a PCS operator which must relocate incumbent licensees and an incumbent licensee which faces potential relocation by

Pursuant to the NPRM for FCC Docket ET-92-9, the FCC's microwave division issued a spectrum policy which stated that new paths licensed after January 16, 1992, would be granted secondary status. Public Notice, Federal Communications Commission issued May 14, 1992; See Attachment B. In addition, the Commission went through a period in 1992 and 1993 when microwave licenses were not issued. SBMS has received microwave licenses issued after January 16, 1992 for new 2 GHz paths, which suggest that they are primary in nature. Furthermore, SBMS has made major and minor modifications for microwave paths that were originally licensed as primary paths prior to January 16, 1992, and received licenses with notations that these licenses are now secondary in nature. These paths should have retained their primary status following the major or minor modifications according to the May 14, 1992, Public Notice (See Attachment B).

As a result, incumbent microwave licensees may find it difficult to establish the primary status of microwave paths and, therefore, find it difficult to establish their right to relocation benefits under the Commission's rules. The Commission should seek additional information in this NPRM from other microwave licensees to determine whether other licensees have experienced similar results in licensing both new and modified microwave paths. If so, then the Commission should establish rules which clearly delineate information which an incumbent microwave licensee must provide to

other PCS operators.

establish its status as a primary licensee in a particular spectrum and establish procedures to ensure that the Commission provides licensees with this information.

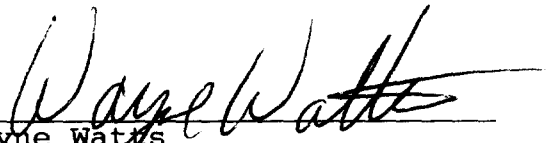
The establishment of such rules will not only add clarity for the incumbent licensees, but will assist the Commission in avoiding enumerable disputes regarding an incumbent licensee's right to relocation benefits under the Commission's rules. This could become particularly important to the Commission should it assume the role of arbitrator, as it will have the effect of limiting the number of disputes which might arise and providing clear guidance to all parties as to the rules to be applied in the event of any disputes.

V. Conclusion

As noted in SBMS' Comments in response to the PBMS Petition, SBMS supports the establishment of a rulemaking to consider the numerous important issues of microwave relocation. In addition to the issues raised in the PBMS Petition and those issues identified in SBMS' Comments, the Commission should seek comment upon and establish rules to address the concerns of both the incumbent licensees and PCS operators as set forth in these Informal Supplemental Comments.

Respectfully submitted,

SOUTHWESTERN BELL MOBILE
SYSTEMS, INC.



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Certificate of Service

I, Kristy Horton, do hereby certify that on this 26th day of June, 1995, a copy of Informal Supplemental Comments of Southwestern Bell Mobile Systems, Inc. in Support of the Petition for Rulemaking of Pacific Bell Mobile Services, FCC Docket No. RM-8643 was mailed, via Airborne overnight delivery to the following:

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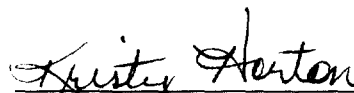
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Kristy Horton

(e) Licenses for Local Television Transmission Service stations that are assigned frequencies allocated to the broadcast services shall terminate simultaneously with the expiration of the authorization for the broadcast station to which such service is rendered.

§ 101.69 Transition of the 2.11-2.13, and 2.16-2.18 GHz bands from Common Carrier Fixed Microwave Services and the 1.85-1.99, 2.13-2.15, and 2.18-2.20 GHz bands from Private Operational Fixed Microwave Service to emerging technologies.

(a) Licensees proposing to implement services using emerging technologies (ET Licensees) may negotiate with Common Carrier and Private Operational Fixed Microwave Service licensees (Existing Licensees) in these bands for the purpose of agreeing to terms under which the Existing Licensees would relocate their operations to other fixed microwave bands or to other media, or alternatively, would accept a sharing arrangement with the ET Licensee that may result in an otherwise impermissible level of interference to the existing licensee's operations. ET Licensees may also negotiate agreements for relocation of the Existing Licensees' facilities within the 2 GHz band in which all interested parties agree to the relocation of the Existing Licensee's facilities elsewhere within these bands. "All interested parties" includes the incumbent licensee, the emerging technology provider or representative requesting and paying for the relocation, and any emerging technology licensee of the spectrum to which the incumbent's facilities are to be relocated.

(b) Common Carrier and Private Operational Fixed Microwave licensees, with the exception of public safety facilities defined in paragraph (f) of this section, in bands allocated for licensed emerging technology services will maintain primary status in these bands until two years after the Commission commences acceptance of applications for an emerging technology services (two-year voluntary negotiation period), and until one year after an emerging technology service licensee initiates negotiations for relocation of the fixed microwave licensee's operations (one-year mandatory negotiation period) or, in bands allocated for unlicensed emerging technology services, until one year after an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations (one-year mandatory negotiation period). When it is necessary for an emerging technology provider or representative of unlicensed device manufacturers to negotiate with a fixed microwave licensee with operations in spectrum adjacent to that of the emerging technology provider, the transition schedule of the entity requesting the move will apply. Public safety facilities defined in paragraph (f) of this section will maintain primary status in these bands until four years after the Commission commences acceptance of applications for an emerging technology service (four-year voluntary negotiation period), and until one year after an emerging technology service licensee or an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations (one-year mandatory negotiation period).

(c) The Commission will amend the operation license of the fixed microwave operator to secondary status only if the following requirements are met:

(1) The service applicant, provider, licensee, or representative using an emerging technology guarantees payment of all relocation costs, including all engineering, equipment, site and FCC fees, as well as any reasonable, additional costs that the relocated fixed microwave licensee might incur as a result of operation in another fixed microwave band or migration to another medium;

(2) The emerging technology service entity completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave frequencies and frequency coordination; and

(3) The emerging technology service entity builds the replacement system and tests it for comparability with the existing 2 GHz system.

(d) The 2 GHz microwave licensee is not required to relocate until the alternative facilities are available to it for a reasonable time to make adjustments, determine comparability, and ensure a seamless handoff.

(e) If within one year after the relocation to new facilities the 2 GHz microwave licensee demonstrates that the new facilities are not comparable to the former facilities, the emerging technology service entity must remedy the defects or pay to relocate the microwave licensee back to its former or equivalent 2 GHz frequencies.

(f) Public safety facilities subject to the four-year voluntary and one-year mandatory negotiation periods, are those that the majority of communications carried are used for police, fire, or emergency medical services operations involving safety of life and property. The facilities within this exception are those facilities currently licensed on a primary basis pursuant to the eligibility requirements of § 90.19, Police Radio Service; § 90.21, Fire Radio Service; § 90.27 Emergency Medical Radio Service; and Subpart C of Part 90, Special Emergency Radio Services. Licensees of other Part 101 facilities licensed on a primary basis under the eligibility requirements of Part 90, Subparts B and C, are permitted to request similar treatment upon demonstrating that the majority of the communications carried on those facilities are used for operations involving safety of life and property.



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET N.W.
WASHINGTON, D.C. 20554

23115

News media information 202/632-6050. Recorded listing of releases and texts 202/632-0002.

May 16, 1992

TWO GIGAHERTZ FIXED MICROWAVE LICENSING POLICY

On January 16, 1992, the Commission adopted a Notice of Proposed Rule Making (Notice) in ET Docket 92-9 that proposes to allocate spectrum for emerging telecommunications technologies. The frequencies at issue currently are used for fixed microwave operation and include 1850-1990, 2110-2130/2160-2180, and 2136-2150/2180-2200 MHz. In the Notice the Commission stated that its goal is to ensure the availability of the existing vacant 2 GHz spectrum in these bands for the development of new services and to discourage possible speculative fixed service applications for this spectrum. Therefore, applications for new fixed microwave facilities submitted after the adoption date of the Notice will be granted on a secondary basis only, conditioned upon the outcome of the proceeding.

In the initial implementation of this policy, the conditional secondary status was applied to all major modifications to existing 2 GHz construction authorizations or licenses, in accordance with 47 C.F.R. §§ 1.962 and 21.27. We recognize, however, that most major modifications will not significantly affect the use and availability of existing 2 GHz spectrum. Therefore, the conditional secondary status will not be applied to modifications of facilities licensed prior to January 16, 1992, including:

- o Any change in antenna azimuth;
- o Any change in antenna beam width;
- o Any change in channel loading;
- o Any change in emission;
- o Any change in station location;
- o Any change in ownership or control;
- o Any increase in antenna height;
- o Any increase in authorized power;
- o Any reduction in authorized frequencies; and
- o Any addition of frequencies not in the 2 GHz band.

We also believe the conditional secondary status should not be applied in certain situations where additional links may be required to complete a communications network, or where new facilities and/or frequencies are operationally connected to a

system, licensed prior to January 15, 1992. In these instances, we will not apply the secondary conditional status when the applicant makes a valid showing of its need for the facilities.

Construction authorizations or licenses granted as a result of an application filed subsequent to the Notice and bearing the secondary-use special condition will, as appropriate, be modified to conform with this current policy and will be reissued on our own motion. In cases where the secondary condition remains applicable, applicants may, if they believe circumstances warrant, file the above described showing and request the condition be removed.

For further information concerning this Public Notice contact Mike Hayden, Chief, Microwave Branch, Private Radio Bureau at (717) 337-1421; Robert James, Chief, Domestic Radio Branch, Common Carrier Bureau at (202) 634-1706; or Fred Thomas at (202) 653-8117, Office of Engineering and Technology.